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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

The adverse consequences of economic sanctions on the enjoyment of human rights

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I INTRODUCTION

1 In its resolution 1997/35 of 28 August 1997, entitled "Adverse consequences of economic sanctions on the enjoyment of human rights", the Sub-Commission expressed concerns about economic sanctions Framing its concerns in the light of the need to respect the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Geneva Conventions of 1949 and the two Additional Protocols thereto, the Sub-Commission stressed four particular points concerning such measures

(i) They should always be limited in time[1] (fourth preambular paragraph),

(ii) They most seriously affect the innocent population, especially the most vulnerable (fifth preambular paragraph),

(iii) They aggravate imbalances in income distribution (sixth preambular paragraph),

(iv) They generate illegal and unethical business practices (seventh preambular paragraph)

2 In this resolution, the Sub-Commission decided to address the question of economic sanctions at its fiftieth session under the agenda sub-item entitled "Implications of humanitarian activities for the enjoyment of human rights"

3 In its decision 1998/112 of 26 August 1998, the Sub-Commission decided to continue discussion of the issue of economic sanctions at its fifty-first session under the same agenda sub-item

4 In its decision 1999/111 of 26 August 1999, the Sub-Commission requested Mr Marc Bossuyt to prepare, without financial implications, a working paper on this topic to be submitted to the Sub-Commission at its fifty-second session The present working paper is submitted pursuant to that decision

A Preliminary comments

5 This working paper addresses issues of great importance in international affairs at the present time, when there has been concern for respect for both international law and international solidarity It has been prepared solely with a view to promoting international law and, international solidarity and, most importantly, the interests of civilian populations affected by the adverse consequences of sanctions

6 The working paper emphasizes first that the Sub-Commission's attention to the issue of sanctions arose in the light of international controversy over several of the sanctions regimes imposed by the United Nations, by regional organizations, by groups of countries or unilaterally by a single country This concern is reflected in the many statements made during the debates at the Sub-Commission over the past years, as well as at the Commission on Human Rights, by members and special rapporteurs of both bodies and by non-governmental organizations (NGOs) Concern over economic sanctions has also been expressed in reports of

special rapporteurs of the Commission on Human Rights and in reports of a number of United Nations specialized agencies, such as the World Food Programme, UNICEF and the World Health Organization. And, recently, both the Secretary-General and the High Commissioner for Human Rights have addressed this topic. The working paper also points out the Sub-Commission's continuing concern about the humanitarian situation in Iraq in relation to sanctions.[2] The Sub-Commission, in its resolution 1996/4 of 19 August 1996, had also expressed concerns about the impact of economic sanctions on Burundi.[3]

7. The working paper reviews these events and materials, as well as a wide array of other material. It is very unfortunate that in the extensive international dialogue taking place at this time there is hardly any mention of human rights and humanitarian law norms.[4] In the light of this, the Sub-Commission's decision to authorize the present working paper was very timely. It is hoped that the working paper can provide a framework for incorporating the human rights and humanitarian law dimension of sanctions in the international dialogue.

8. The working paper first provides a brief framework for the discussion of sanctions. It goes on to identify provisions of international law relevant to the issue of economic sanctions and the enjoyment of human rights and sets out a six-prong test for evaluating sanctions. The working paper then considers the theory of economic sanctions and the current "smart sanctions" debate. It highlights certain sanctions regimes that most clearly illustrate the adverse consequences of economic sanctions. Finally, it considers actions to be undertaken when economic sanctions have an unduly harsh impact on human rights and other international law provisions. In this respect, some conclusions and recommendations are formulated.

B. Understanding sanctions: the basics

9. Sanctions represent a middle ground in international politics, being more severe than mere verbal condemnation, but less severe than the use of force. In accordance with Article 41 of the Charter of the United Nations, within the United Nations, authority to impose sanctions lies exclusively with the Security Council. Regional organizations are authorized under Article 52 to "achieve pacific settlement of local disputes" without express permission of the Security Council, "provided that ... their activities are consistent with the Purposes and Principles of the United Nations".

10. In practice, sanctions have comprised a wide range of actions, from economic embargoes to restrictions on participation in the Olympic Games. There follows a brief classification of sanctions: economic, travel, military, diplomatic or cultural.

1. Economic sanctions

11. There are two basic kinds of economic sanctions: trade sanctions and financial sanctions.

(a) Trade sanctions

12. Trade sanctions restrict imports and exports to and from the target country. These restrictions can be comprehensive, as in the case of Iraq, or they can be selective, only restricting

certain goods often connected with a trade dispute. Comprehensive trade sanctions are the target of the current criticism of sanctions regimes, because of the humanitarian crises that have erupted in countries against which such sanctions have been imposed.

(b) Financial sanctions

13. Financial sanctions address monetary issues. They can include, as has been addressed at the Interlaken Conferences,[5] blocking government assets held abroad, limiting access to financial markets and restricting loans and credits, restricting international transfer payments and restricting the sale and trade of property abroad. The freezing of development aid also falls into this category. Obviously, there is substantial overlap between financial and trade sanctions, especially when applied comprehensively, since with their foreign assets frozen and access to new funds blocked, Governments will be unable to pay for imports, and trade will suffer.

2. Other types of sanctions

(a) Travel sanctions

14. Travel sanctions can include both sanctions against the travel of certain individuals or groups and sanctions against certain kinds of air transport. The first kind is by nature targeted, as lists of people or groups of people are compiled who are not allowed to leave their country. This type of ban has been imposed on Governments, such as against members of the military junta in Sierra Leone in 1998, and also against non-governmental groups, such as the leaders of the National Union for the Total Independence of Angola (UNITA) in 1997. Bans on certain types of air travel include the current ban on taking off or landing of any aircraft owned, leased or operated by or on behalf of the Taliban, established by the Security Council in its resolution 1267 (1999).[6]

(b) Military sanctions

15. Military sanctions may include arms embargoes or the termination of military assistance or training. They are also inherently "targeted", as, domestically, only the armed forces feel their impact. Legal problems may arise, however, when a country's right to self-defence is infringed, as many States subject to arms embargoes have argued.

(c) Diplomatic sanctions

16. Diplomatic sanctions directly target the rulers of a sanctioned State: diplomats and political leaders may have their visas revoked and may be forbidden to participate in international bodies and organizations. The refusal of the United Nations to allow the participation of the apartheid Government of South Africa in its operations is an example of this type of sanction. Other steps towards diplomatic isolation include the withdrawal of diplomatic personnel and international organizations from the target country.

(d) Cultural sanctions

17. Finally, cultural sanctions, while having less of a negative impact than other forms of sanctions, can still have undesired results. The athletes of the target nation may be banned from international sports competitions, folk dancers, musicians and other artists may also be banned and restrictions may be placed on educational and tourist travel.

II. SANCTIONS AND INTERNATIONAL LAW: A LAW OF LIMITATION

18. The most important implication of international law, especially human rights and humanitarian law, for sanctions is that the right to impose sanctions is not unlimited.[7] Thus, an examination of the standards of international law relevant to sanctions involves looking for the limitations to sanctions inherent in the general operation of international law.

A. Sanctions and the Charter of the United Nations: legitimation and limitation

19. Article 39 of the Charter of the United Nations allows the Security Council to take measures such as sanctions only to "maintain or restore international peace and security" following its determination that there exists a threat to or breach of the peace, or an act of aggression.[8] Thus, sanctions may only be imposed upon a Government, "quasi-Government" or other entity that is capable of being a threat to international peace or security or that is in fact threatening international peace and security. While armed groups within a country may pose a threat to international peace and security, a generally unarmed civilian population is, in all likelihood, unable to pose such a threat. Other States not presenting a threat to, or actually breaching, peace and security must not be affected by sanctions imposed on the violating State.

20. Furthermore, the "threat" may not be determined on the basis of ulterior political motives - there must be genuine "international concern" behind the sanctions, not the foreign or domestic policy considerations of a single State or group of States.

21. Sanctions may not be imposed to secure any of the other Purposes and Principles of the United Nations as set out in Article 1 of the Charter, unless there is a credible determination of a threat to or a breach of the peace or an act of aggression.[9]

22. In addition to these limitations, other provisions that would limit sanctions are found throughout the Charter.

1. Limitations implied by Article 24

23. Article 24 requires the Security Council to "act in accordance with the Purposes and Principles of the United Nations". Thus, no act of the Security Council is exempt from scrutiny as to whether or not that act is in conformity with the Purposes and Principles of the United Nations.

2. Limitations implied by Article 1

24. Article 1, paragraph 1, requires that sanctions or other measures undertaken to maintain international peace and security must be "effective" and must be "in conformity with the principles of justice and international law". Sanctions must be evaluated to ensure that they are not unjust or that they do not in any way violate principles of international law stemming from sources "outside" the Charter. Likewise, sanctions must be constantly reviewed to ascertain whether or not they are effective in maintaining peace and security. Ineffective or unjust sanctions or those that violate other norms of international law may not be imposed, or must be lifted if they have been imposed.

25. Article 1, paragraph 2, requires that sanctions or other measures "respect the principle of equal rights and the self-determination of peoples". Sanctions that cause international dissention, that interfere with a State's legal rights, or that unduly affect a people's right to self-determination may not be imposed or must be lifted if imposed.

26. The United Nations purpose of promoting and encouraging respect for human rights set out in article 1, paragraph 3, necessarily limits sanctions. Article 1, paragraph 3, also requires the United Nations to solve issues of a pressing humanitarian nature, not to cause them.[10] Sanctions, therefore, must not result in undue hardships for the people of a country. Sanctions that directly or indirectly cause deaths would be a violation of the right to life.[11] Other human rights could also be violated by sanctions regimes, such as the rights to security of the person, health, education or employment.

27. Article 1, paragraph 4, requires that sanctions or other measures facilitate the harmonization of national or international action. Sanctions imposed on one country but not on another for the same wrongs would violate this requirement of harmonization. Sanctions imposed unequally on two countries for the same wrongs would also violate the harmony provision.

3. Limitations implied by Article 55

28. Article 55 of the Charter reinforces the limitations of article 1, paragraph 3, in its requirement that the United Nations promote:

Higher standards of living and economic and social progress (para. a);

Solutions to international economic, social, health and other problems (para. b); and

Respect for and observance of human rights (para. c).

Sanctions regimes that lower economic standards, create health problems or are detrimental to the observance of human rights would violate Article 55.

B. General Assembly resolutions relevant to sanctions

29. The General Assembly has passed a number of resolutions that elaborate on Article 1 and that must also be taken into consideration regarding sanctions. They include the following:

(i) Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations[12]

(ii) Charter of Economic Rights and Duties of States (Economic Charter)[13]

(iii) Permanent sovereignty over natural resources[14]

(iv) Universal Declaration on the Eradication of Hunger and Malnutrition.[15]

C. Limitations to sanctions in human rights law[16]

1. Universal Declaration of Human Rights

30. While the whole of the Universal Declaration of Human Rights must be taken into consideration, some provisions are especially important: the right to life (art. 3), the right to freedom from inhuman or degrading treatment (art. 5), the right to an adequate standard of living, including food, clothing, housing and medical care (art. 25) are especially vulnerable to violation under sanctions regimes. Article 25 also establishes the right to social security in the event of lack of livelihood in circumstances beyond a person's control and the entitlement to special care of mothers and children, both of which are vulnerable to violations. The rights of prisoners or others under detention or involuntary committal are especially vulnerable.

2. The International Covenants on Human Rights

31. The two International Covenants on Human Rights reiterate the rights set out in the Universal Declaration of Human Rights. For example, the International Covenant on Economic, Social and Cultural Rights provides for the right to an adequate standard of living (art. 11); the right to health (art. 12) and the right to education (art. 13). The right to life is protected in article 6 of the International Covenant on Civil and Political Rights. Article 4 of the latter Covenant contains the additional concept of the non-derogability of basic rights.

3. Other human rights instruments relevant to sanctions

Convention on the Rights of the Child

Declaration of the Principles of International Cultural Cooperation[17]

Standard Minimum Rules for the Treatment of Prisoners

D. Limitations to sanctions in humanitarian law[18]

32. Any sanctions regime imposed during a war or as a consequence of a war is governed by humanitarian law.[19] Under humanitarian law the civilian population must be protected from war and its consequences as much as possible. This requires that the civilian population must always be provided with or allowed to secure the essentials for survival: food, potable water, shelter, medicines and medical care.

1. The Hague Convention and Regulations respecting the Laws and Customs of War on Land of 1907[20]

33. The Hague Convention and Regulations of 1907 contain a number of provisions that could substantially limit sanctions regimes. For example, the Martens Clause (eighth preambular paragraph, re-stated in the Geneva Conventions of 1949 and Additional Protocol I thereto[21]) mandates that all situations arising from war be governed by principles of law of civilized nations, principles of humanity, and the dictates of the public conscience. Article 50 of the Regulations provides: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."

2. Geneva Conventions of 1949

34. The Geneva Conventions have many provisions relevant to the imposition of sanctions. For example, they mandate the free passage of medical provisions and objects necessary for religious worship (see, for example, Convention IV, art. 23).

35. The Conventions also set out rules relating to medical convoys and evacuation (see, for example, Convention IV, arts. 21-22), which could be violated by a sanctions regime that limited land or air convoys of humanitarian goods. Because the fundamental purpose of the Geneva Conventions is to provide for the medical needs of military personnel wounded in battle as a result of armed conflict, any provision of a sanctions regime that limits the ability of a State to provide for its war wounded must be viewed as illegal. Geneva Convention rights may not be abrogated or waived in any circumstance.[22]

36. The two protocols Additional to the Geneva Conventions of 1949 reinforce some of the provisions. For example, Protocol I, article 54, requires the protection of objects indispensable to the survival of the civilian population. A provision of a sanctions regime that authorizes military action against such objects or that denies the repair and recommissioning of those illegally damaged in the course of armed conflict must be viewed as illegal. Protocol I, article 70, provides for relief actions for the benefit of the civilian population and would be violated by any provision of a sanctions regime that limits or modifies relief action.

37. Protocol II contains parallel provisions to many of the provisions set out in Protocol I. For example, Protocol Additional II, article 14, provides for the protection of objects indispensable to the survival of the civilian population.

3. General Assembly resolutions pertaining to armed conflict

38. The General Assembly has passed many resolutions relating to the protection of persons in times of armed conflict.[23] For example, General Assembly Resolution, 3318 (XXIX), of 14 December 1974, on the Declaration on the Protection of Women and Children in Emergency and Armed Conflict provides, in paragraph 6:

> "Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict ... shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Rights of the Child or other instruments of international law."

E. Legitimation of and limitations on regionally and unilaterally imposed sanctions

39. Regional bodies and individual countries also have a role in sanctions regimes and, on their own or in concert with the United Nations, have imposed sanctions on countries in their areas. Europe, Africa and the Americas also have regional human rights forums with regional human rights requirements that could be violated by a particular sanctions regime. Sanctions have been imposed, for example, by the Council of Europe, the Organization of African Unity and sub-groupings of it, and by the Organization of American States. Individual countries and component parts of individual countries have also imposed sanctions.[24]

40. The Charter of the United Nations limits the sanctions that may be imposed regionally or by a group of States or by a single Government. Article 52 mandates that regional arrangements and their activities be "consistent with the Purposes and Principles of the United Nations". A sanctions regime imposed unilaterally or by a regional body must meet all the requirements for such sanctions inherent in the Charter, including conformity with the principles of justice and international law.

F. Evaluating sanctions: the six-prong test

41. The above-listed limitations to sanctions allow the extrapolation of a six-prong test to evaluate sanctions.

1. Are the sanctions imposed for valid reasons?

42. Sanctions under the United Nations must be imposed only when there is a threat of or actual breach of international peace and security. Sanctions may not be imposed for invalid political reasons (personal grudges, "East-West" or "North-South" politics, "left-right" politics and the like). Sanctions may not arise from or produce an economic benefit for one State or group of States at the expense of the sanctioned State or other States.[25] Sanctions may not result in undue interference with a State's sovereignty rights under international law.

2. Do the sanctions target the proper parties?

43. Sanctions may not target civilians who are uninvolved with the threat to peace or international security. Sanctions that would result in an abrogation of Geneva Convention rights are void; there can be no effective, presumed or actual waiver of these rights. Sanctions may not target, or result in collateral damage to, "third party" States or peoples.[26]

3. Do the sanctions target the proper goods or objects?

44. Sanctions may not interfere with the free flow of humanitarian goods under the Geneva Conventions and other provisions of humanitarian law. Sanctions may not target goods needed to ensure the basic subsistence of the civilian population (food, drinking water, basic medicines and immunizations), regardless of whether there is an armed conflict. Sanctions may not target essential medical provisions or educational materials of any kind. Even if a target is otherwise legal, the target must still have a reasonable relationship to the threat of or actual breach of peace and international security.

4. Are the sanctions reasonably time-limited?

45. Legal sanctions may become illegal when they have been applied for too long without meaningful results. Sanctions that continue for too long can have a negative effect long after the wrong ceases (the so-called "undue future burden" effect).[27] Sanctions that go on too long may also be viewed as ineffective.

5. Are the sanctions effective?

46. Sanctions must be reasonably capable of achieving a desired result in terms of threat or actual breach of international peace and security. Sanctions that are targeted in ways that would not affect the wrongs may be viewed as ineffective.

6. Are the sanctions free from protest arising from violations of the "principles of humanity and the dictates of the public conscience"?

47. The reaction of Governments, intergovernmental bodies, non-governmental organizations, scholars and, of course, the public must be taken into account in evaluating sanctions regimes. This prong, the so-called "Martens Clause test", is important not only in terms of the human rights and humanitarian law from which it derives, but also in terms of the Charter's call for international solidarity and the need to address pressing humanitarian concerns. The public outcry over the sanctions regime in Iraq clearly invokes the Martens Clause test. Individuals and groups are even willing to violate the sanctions and to carry out Gandhi-like passive resistance, including a planned "die-in" for the summer of 2000. Regarding the sanctions imposed on Burundi and Cuba, numerous public officials (United Nations and otherwise) have pointed to their disastrous consequences.

III. DESIGNING "SMARTER" SANCTIONS

A. Theory and efficacy of economic sanctions

48. The "theory" behind economic sanctions is that economic pressure on civilians will translate into pressure on the Government for change. This "theory" is bankrupt both legally and practically, as more and more evidence testifies to the inefficacy of comprehensive economic sanctions as a coercive tool. The traditional calculation of balancing civilian suffering against the desired political effects is giving way to the realization that the efficacy of a sanctions regime is in inverse proportion to its impact on civilians.

49. The case of Iraq by itself points to serious problems in the traditional theory of economic sanctions. In regimes where political decision-making is not democratic, there is simply no pathway through which civilian pressure can bring about change in the Government. In addition, civilian hardship can easily be translated into political advantage by a ruling regime. The targeted Government, especially if it has a strong grip on the media, will push its citizens to unite behind it in defiance of the foreign States. Sanctions can be used by the targeted Government as a scapegoat for its problems and give leaders fuel for political extremism.

50. Under sanctions, the middle class is eliminated, the poor get poorer, and the rich get richer as they take control of smuggling and the black market. The Government and elite can actually benefit economically from sanctions, owing to this monopoly on illegal trade. As many commentators have pointed out, in the long run, as democratic participation, independent institutions and the middle class are weakened, and as social disruption leaves the population less able to resist the Government, the possibility of democracy shrinks. In sum, the civilian suffering that is believed to be the effective factor in comprehensive economic sanctions renders those sanctions ineffectual, even reinforcing the Government and its policies.[28]

51. The Secretary-General recognized this, writing in his Millennium Report:

> "When robust and comprehensive economic sanctions are directed against authoritarian regimes, a different problem is encountered. Then it is usually the people who suffer, not the political elites whose behaviour triggered the sanctions in the first place. Indeed, those in power, perversely, often benefit from such sanctions by their ability to control and profit from black market activity, and by exploiting them as a pretext for eliminating domestic sources of political opposition."[29]

The data support this argument. There is a no small debate around the interpretation of successes and failures of sanctions regimes,[30] but even the most optimistic point to only about a third of all sanctions having even "partial" success, while others looking at the data have come up with a 5 per cent success rate, and a dismal 2 per cent success rate for sanctions against "authoritarian regimes".[31] In addition, it has been noted that financial sanctions alone have a greater success than trade sanctions or combined trade and financial sanctions.[32] Finally, if the purpose of the sanctions is anything beyond merely the "destabilization of the regime", an aim that all Security Council sanctions ostensibly share, researchers have shown that the severity of

sanctions is statistically insignificant in determining their success, and that the longer a sanctions regime stays in place, the lower its success. The same researchers demonstrated that when the economic elite are targeted, there is a significant increase in success.[33]

52. Part of the debate on sanctions focuses on ways to mitigate civilian suffering to the point where it does not produce unwanted counter-effects, thus allowing a regime of comprehensive economic sanctions to put pressure on the government. Under the proviso of "humanitarian exemptions", certain necessary humanitarian goods can pass through the sanctions barricade. The primary example of this is the "oil-for-food" programme in Iraq. However, this policy is rife with problems. As was exemplified in Iraq, humanitarian exemptions can in no way fully compensate for the damage done by comprehensive economic sanctions. To quote one analyst:

> "There was general consensus at the seminar that humanitarian exemptions could not provide an adequate safety net against the social and economic dislocation that prolonged trade embargoes cause. Such embargoes have an impact at macro-level. Humanitarian exemptions only mitigate the situation at micro-level and, even when generous, do not constitute a resource flow that can compensate for dramatic overall economic recession."[34]

53. Comprehensive economic sanctions, even qualified by "humanitarian exemptions", do not make any practical sense for changing a recalcitrant State's policies. The traditional theory behind sanctions is disproved by evidence from recent sanctions regimes, and the doctrine of "humanitarian exemptions" amounts to a futile attempt to mitigate disasters. Instead of trying to patch the sunk ship of comprehensive economic sanctions (likened to "medieval military sieges" by one writer[35]) through "humanitarian exemptions", sanctions should be rethought entirely. This is the "smart sanctions" debate set out below.

B. Smart sanctions

54. In response to the tragic consequences of comprehensive economic sanctions on civilians, an increasingly concerted public discourse has arisen around "targeted" or "smart" sanctions. These targeted sanctions are conceived of as directly affecting the political leaders or those responsible for the breach of peace, while leaving the innocent civilian population alone. Properly targeting sanctions, it is hoped, can eliminate civilian suffering while putting significant pressure on the Government itself, thus bringing sanctions regimes into compliance with human rights and humanitarian law and increasing their chances of success.

55. Targeted economic sanctions, especially targeted financial sanctions, have become an international policy focus lately, giving rise to the Interlaken Process centred around two conferences held in Interlaken, Switzerland, in 1998 and 1999, and to a number of other seminars, conferences and research projects around the world.[36] They have been repeatedly endorsed by the Secretary-General, especially in his Millennium Report.[37]

56. Targeted economic sanctions may target the personal foreign assets and access to foreign financial markets of members of the Government, the ruling elite, or members of the military. The assets of government-owned businesses may also be frozen and investment in those

businesses prohibited. Imports of luxury goods and other goods generally only consumed by the ruling elite can be banned. It is generally advised that lists be drawn up with the names of political and/or military leaders whose assets are to be frozen and who are subject to travel restrictions; such a list for the imposition of targeted financial sanctions has only been drawn up by the United Nations once, during the sanctions against Haiti, but in that case the list was not even legally binding.

57. Carefully targeted sanctions, it is argued, can also reduce the harm done to third-party States, thus removing incentives to defy the sanctions, as has recently happened in Africa, with many countries ignoring the travel ban against the Libyan Arab Jamahiriya. Use of the six-prong test to ensure proper targeting, clearly defined goals, a definitive exit clause, and regional unanimity, sanctions regimes could be effective while not harming the civilian population. It is up to the international community to demand that the Security Council introduce such changes.

IV. SANCTIONS CASE STUDIES

58. The following case studies focus on the sanctions regimes imposed upon three countries, Iraq, Burundi and Cuba. The foregoing discussion of international law, especially the "six-prong test", will be applied to each of these situations. The selection of these three nations is based mainly upon the massive international protest they have each spurred. The three cases are also exemplary as one involves Security Council-imposed multilateral sanctions, one involves regionally-imposed sanctions and one unilaterally-imposed sanctions. In each case, general information will be provided about the sanctions regime, followed by an examination of the effects of the sanctions on civilians, the public response to the sanctions regimes and, finally, an evaluation of the legal standing of the sanctions in the light of international law.

A. Iraq

59. The sanctions against Iraq are the most comprehensive, total sanctions that have ever been imposed on a country. The situation at present is extremely grave. The transportation, power and communication infrastructures were decimated during the Gulf war, and have not been rebuilt owing to the sanctions. The industrial sector is also in shambles and agricultural production has suffered greatly. But most alarming is the health crisis that has erupted since the imposition of the sanctions.

1. Implementation of sanctions

60. The Security Council imposed multilateral comprehensive economic sanctions in its resolution 661 (1990) of 6 August 1990. Under the sanctions all imports and exports to and from Iraq were banned, exemptions being allowed for supplies intended strictly for medical purposes and, in certain circumstances, foodstuffs.[38] The Security Council imposed marine and air blockades in its resolutions 665 (1990) and 670 (1990).

61. Following the Gulf war, the Security Council, in its resolution 687 (1991) authorized the continuation of sanctions, with the same humanitarian caveats. The Sanctions Committee was

authorized to permit imports of petroleum originating from Iraq, in order to enable Iraq to pay for imports of foodstuffs, medicines and essential civilian supplies. In resolution 687 (1991), the Security Council also imposed a comprehensive arms embargo and established a technical commission of experts (UNSCOM) to monitor and destroy the weapons of mass destruction of Iraq.

62. In 1991, the Council adopted resolutions 706 (1991) and 712 (1991), authorizing the sale of up to $1.6 billion worth of petroleum and petroleum products by Iraq each six months. The resolutions were never implemented and it was not until 1996 that the "oil-for-food programme" came into effect. Resolution 986 (1995) permitted the sale of $2 billion of Iraqi oil over 180 days, the proceeds from which were to be placed in a United Nations-controlled bank account. Of the revenues from the sale, however, only about half ended up going towards the purchase of humanitarian goods, the majority of the rest going towards reparations and administrative costs. This resolution was implemented with the signing of a memorandum of understanding between the Secretariat and the Government of Iraq on 20 May 1996. The programme went into effect 10 December 1996. Although it was conceived of as a temporary measure, the "oil-for-food" scheme is still in effect, having been extended several times. The amount Iraq is allowed to sell was increased considerably in resolution 1153 (1998), and the cap was dropped altogether in December 1999 in resolution 1284 (1999). More money has also been allowed for the repair of Iraq's greatly damaged oil industry. However, this mitigation of the sanctions is in no way a solution to the crisis, as the United Nations Secretary-General stated in March 2000, "Even if it [the oil-for-food programme] is implemented perfectly, it is possible that our efforts will prove insufficient to satisfy the population's needs".[39]

2. Effects on civilians

63. As has been documented by United Nations agencies, NGOs, humanitarian and human rights organizations, researchers and political leaders, the sanctions upon Iraq have produced a humanitarian disaster comparable to the worst catastrophes of the past decades. There is broad controversy and little hard evidence concerning the exact number of deaths directly attributable to the sanctions; estimates range from half a million to a million and a half, with the majority of the dead being children. It should be emphasized that much of the controversy around the number of deaths is only serving to obfuscate the fact that any deaths at all caused by the sanctions regime indicate grave breaches of humanitarian law and are unacceptable.

64. In 1999, after conducting the first surveys since 1991 of child and maternal mortality in Iraq, UNICEF concluded that in the heavily-populated southern and central parts of the country, children under five are dying at more than twice the rate they were 10 years ago.[40] An expert on the effects of sanctions on civilians states that "the underlying causes of these excess deaths include contaminated water, lack of high quality foods, inadequate breastfeeding, poor weaning practices, and inadequate supplies in the curative health-care system".[41] The lack of food due to sanctions translated into a 32 per cent drop in per capita calorie intake compared to before the Gulf war.[42] According to the Government of Iraq, by 1997, only half of the water treatment capacity of the country was operational.[43]

65. Owing to the lack of medical supplies, it was estimated that, by 1997, 30 per cent of hospital beds were out of use, 75 per cent of all hospital equipment did not work and 25 per cent of Iraq's 1,305 health centres were closed.[44] A recent Security Council-appointed panel summarized the health and sanitation situation as follows:

> "In marked contrast to the prevailing situation prior to the events of 1990-1991, the infant mortality rates in Iraq today are among the highest in the world, low infant birth weight affects at least 23 per cent of all births, chronic malnutrition affects every fourth child under five years of age, only 41 per cent of the population have regular access to clean water, 83 per cent of all schools need substantial repairs. The ICRC states that the Iraqi health-care system is today in a decrepit state. UNDP calculates that it would take 7 billion US dollars to rehabilitate the power sector country-wide to its 1990 capacity."[45]

66. Although some note a slow improvement in health and nutrition indicators since 1997,[46] the disaster and deaths continue, and even as recently as March 2000, the Secretary-General expressed particular concern for the plight of Iraqi children.[47]

67. The health crisis in Iraq is intertwined with the general social and economic crises which the sanctions have prompted. Even if the deaths were to cease as the result of humanitarian exemptions (as the Secretary-General and others deem impossible), there would still be massive, systematic violations of Iraqi citizens' other rights attributable to the sanctions. The economic, social and cultural rights of the Iraqi people are being swept aside, as are their rights to development and to education. For example, the purchasing power of an Iraqi salary by the mid-1990s was about 5 per cent of its value prior to 1990[48] and, as the United Nations Development Programme field office recognized, "the country has experienced a shift from relative affluence to massive poverty".[49] The previous advances in education and literacy have been completely reversed over the past 10 years. As Denis Halliday, former United Nations Assistant Secretary-General and Humanitarian Coordinator in Iraq, declared after his resignation in September 1998, "sanctions have had a serious impact on the Iraqi extended family system. We're seeing an increase in single-parent families, usually mothers struggling alone. There's an increase in divorce. Many families have had to sell their homes, furniture and other possessions to put food on the table, resulting in homelessness. Many young people are resorting to prostitution".[50] In addition, crime has risen and emigration has skyrocketed. Researchers have also shown how sanctions have an overwhelmingly greater negative medical and social impact on women, as women bear the brunt of the social and economic displacements and upheaval.[51]

3. The response to sanctions

68. The outcry against the sanctions on Iraq has come from all sides. From within the United Nations, the Secretary-General himself has been at the forefront of the criticism, levelling serious charges against the sanctions regime in his report to the Security Council of 10 March 2000 (S/2000/208) and stating two weeks later that "the Council should seek every opportunity to alleviate the suffering of the population, who after all are not the intended targets of sanctions".[52] The sanctions have led to the resignation of three United Nations officials, two this year alone. First, Denis Halliday, former United Nations Assistant Secretary-General and Humanitarian Coordinator in Iraq, resigned in September 1998, declaring: "We are in the process of destroying an entire society. It is as simple and terrifying as that. It is illegal and

immoral".[53] Hans von Sponeck, Halliday's successor as Humanitarian Coordinator in Iraq, resigned on 13 February 2000, explaining that he could not any longer be associated with a programme that prolonged the sufferings of the people and which had no chance to meet even the basic needs of the civilian population.[54] Two days later, Jutta Burghardt, head of the World Food Programme in Iraq, also resigned, stating "I fully support what Mr. von Sponeck is saying".[55]

69. Both in the Security Council, the body which has supposedly provided legitimization to the sanctions regime, and in other United Nations forums, a number of countries have expressed concerns over the impact of the sanctions; they include Brazil, China, Egypt, the Republic of Korea, Kenya, France, Russia and Slovenia.

70. The sanctions have also produced an outcry from civil society. Ending the sanctions has become a focus for NGOs, human rights groups and humanitarian organizations across the world and demonstrations, petitions, lobbying campaigns and conferences have been devoted to the issue. Civil society groups have sprung up whose sole purpose is to end the sanctions and which have worked to bring together academics, activists and political leaders who share that goal. At the Commission on Human Rights, there have been a multitude of statements condemning the sanctions.[56] Many groups have defied the embargo and brought humanitarian aid to Iraq in acts of international civil disobedience.[57] In legal terms, this popular protest is clearly establishing the "dictates of the public conscience".

4. Iraqi sanctions and international law

71. The sanctions regime against Iraq is unequivocally illegal under existing international humanitarian law and human rights law. Some would go as far as making a charge of genocide.[58] Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force on 12 January 1951, defines genocide as follows:

> "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily harm or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> ..."

72. The sanctions regime against Iraq has as its clear purpose the deliberate infliction on the Iraqi people of conditions of life (lack of adequate food, medicines, etc.) calculated to bring about its physical destruction in whole or in part. It does not matter that this deliberate physical destruction has as its ostensible objective the security of the region. Once clear evidence was available that thousands of civilians were dying and that hundreds of thousands would die in the future as the Security Council continued the sanctions, the deaths were no longer an unintended

side effect - the Security Council was responsible for all known consequences of its actions. The sanctioning bodies cannot be absolved from having the "intent to destroy" the Iraqi people. The United States Ambassador to the United Nations in fact admitted this, when questioned whether the half million deaths were "worth it", she replied: "we think the price is worth it".[59] The States imposing the sanctions could raise questions under the genocide Convention.

73. Any sanctions that are imposed as a result of war or as a part of war are regulated by the laws of armed conflict.[60] Of course, the "six-prong test" is still applicable, but in the Iraqi case it must be interpreted in the light of established armed conflict law. The sanctions against Iraq were first imposed in the context of Iraq's military invasion of Kuwait, were maintained during the Gulf war and then were extended indefinitely after the first phase of military hostilities ended. Also, the continued air strikes by United States and United Kingdom planes qualify the situation as an armed conflict. Thus, the strict measures stipulated in international humanitarian law for the protection of civilians in armed conflict is applicable to the sanctions regime and its instigators, and violations of those laws can be prosecuted as war crimes. In this vein, reference should be made to the argument presented earlier under "Limits to sanctions in humanitarian law", especially the section on the Geneva Conventions of 1949. Particularly germane are the provisions of the Geneva Conventions allowing for exemptions for medical supplies and for goods needed for the survival of the civilian population, the prohibition in Protocol I, article 54, paragraph 1, of "starvation of civilians as a method of warfare", and the provisions relating to the protection of women and children, the two groups most injured by the sanctions regime. Finally, humanitarian law, in accordance with the Martens Clause, clearly establishes that the "dictates of the public conscience" are to be considered binding in cases where the law is not specific. The popular outcry against the sanctions, as mentioned above, constitutes these dictates, rendering the sanctions illegal.

B. Burundi

74. Burundi provides another sad example of the immensely deleterious effects comprehensive economic sanctions can have on all aspects of a society. To quote one study: "Across the various sectors reviewed [poverty, health, agriculture, water, sanitation, education, democracy], the pattern is consistent: serious problems predating sanctions were exacerbated by the imposition of sanctions, which themselves had numerous effects on civilian populations. The imposition of economic sanctions worsens an already grim situation, raising serious moral and ethical questions."[61]

1. Implementation of sanctions

75. Comprehensive economic sanctions against Burundi were called for in July 1996 at the Second Arusha Regional Summit on Burundi (Arusha II), and were gradually imposed during August 1996 by the Governments of Tanzania, Kenya, Uganda, Ethiopia, Zaire (now the Democratic Republic of the Congo), Rwanda and Namibia. Through the sanctions, conceived of as a response to the military coup of 25 July 1996, those States sought the restoration of the National Assembly, the re-legalization of political parties, and immediate and unconditional negotiations with all parties to the conflict in Burundi. The States concerned set up the Regional Sanctions Coordinating Committee (RSCC) to regulate and monitor the sanctions.

76. The sanctions were imposed without the formal endorsement of the Security Council, although on 30 August 1996, in its resolution 1072 (1996), the Council expressed "strong support for the efforts of regional leaders". The Special Rapporteur of the Commission on Human Rights on the situation of human rights in Burundi also gave his support to the sanctions, stating that economic sanctions should not be lifted until the authorities had pursued efforts for a ceasefire between the parties, and human rights violations had been investigated.[62]

77. In the months following their imposition, the sanctions were gradually modified to provide for "humanitarian exemptions". In August 1996, medicines and emergency food were allowed to be made available for Rwandan refugees; in September, essential foodstuffs, vaccines and emergency medical and laboratory supplies, emergency relief items, limited water and sanitation equipment, and plastic sheeting for shelter were allowed in; in October, the list was expanded further, to include seeds and a month's supply of gasoline.[63] The deficit of necessary goods was so great, however, and the exemption process so slow and opaque that by March 1997 exemption requests for educational materials, spare parts, medical evacuations, hand tools, and further food and fuel were still pending before the RSCC. On 16 April 1997, the exemptions were expanded even further, to include all food and food products, medicines, items relating to education and construction, and agricultural materials.

78. In February 1998, the Governments of the region began to disagree on the issue, and neither Kenya nor Zambia enforced sanctions after that. Sanctions were suspended by the regional Heads of State on 23 January 1999, on the condition that they would be re-imposed if no progress towards peace were made. They remain suspended to date.

2. Effects on civilians

79. As numerous witnesses and researchers have testified, the many "humanitarian exemptions" in no way halted the suffering of Burundi's citizens, and the problems continue to this day, long outliving the sanctions regime itself. While the sanctions were in place, serious shortages of fuel, spare parts, medicines and fertilizers were experienced, with corresponding dramatic price increases and inflation. Commerce and industry were paralysed by the lack of raw materials and spare parts, unemployment skyrocketed and incomes plummeted. Agriculture also suffered because of the shortage of seeds and fertilizers.

80. Development assistance, approximately $250 million annually, was cut off and foreign currency reserves were exhausted. Burundi's health infrastructure was heavily hit, and the inability to obtain even emergency medical supplies led to severe shortages of medicines and vaccines. Sanitation and water programmes were scaled down or eliminated. Humanitarian aid agencies were left helpless in the face of escalating need and increasingly difficult working conditions - the World Food Programme (WFP) alone was distributing emergency food assistance to an average of 218,000 people each month in 1998.[64]

81. The sanctions, and the humanitarian impact of the sanctions, predictably led to political problems as well.[65] As reported in one study: "Sanctions provided the regime with a useful propaganda tool. In an effort to garner domestic support, the Burundi regime accused neighbouring countries of harbouring secret agendas against the Burundi people. Sanctions also

were used to deflect attention away from the regime's own inadequacies and from well-documented human rights concerns."[66] The military regime apparently even benefited from sanctions as it monopolized smuggling operations.[67]

82. As recent evidence attests, the problems are far from being over.[68] The health infrastructure is in shambles, as are the industrial and agricultural sectors. Desperately needed foreign assistance to fund reconstruction is still nowhere to be found.[69] Of course, much of the destruction is attributable to the continuing civil war, but there can be no doubt, as many researchers have pointed out, that the sanctions compounded, and their after-effects continue to compound, this grave humanitarian catastrophe.[70] "It will take time before Burundi's agricultural production returns to previous levels", said Thomas Yanga, the WFP representative in Burundi, "the country will need significant amounts of food aid in the immediate future to enable families to slowly recover, and allow the tens of thousands affected by insecurity to receive emergency assistance".[71] Of late, humanitarian assistance has been scaled back even further in the wake of the deaths of several humanitarian aid workers, including executions of WFP and UNICEF staff.

3. The response to sanctions

83. The international outcry against the sanctions grew in volume as the dimensions of the humanitarian disaster came to light. Already by December 1996, participants at the Franco-African Summit, in Ouagadougou, Burkina Faso, urged regional leaders "to take appropriate measures on the embargo to reduce the suffering of the people".[72] According to the March 1997 FAO/WFP crop and food supply assessment mission to Burundi, "There is little doubt that the economic embargo on Burundi has exacerbated the adverse effects of civil strife in the country and resulted in further lowering of agricultural production and incomes and a deterioration in the food supply situation".[73] A month later, OAU Secretary-General Salim Ahmed Salim stated: "there is a need to review and ensure that those sanctions which hurt civilians ... are lifted".[74] In 1998, the Special Rapporteur on the situation of human rights in Burundi in his report to the Commission on Human Rights stated that the sanctions were having a disastrous effect on the general population of Burundi.[75]

84. The President of France, Jacques Chirac, spoke out against sanctions in March 1998 and Pope John Paul II,[76] the Government of the United Kingdom,[77] and the European Union Special Envoy for the Great Lakes Region, Mr. Aldo Ajello, followed suit. A United Nations Development Programme (UNDP) report released in mid-December 1998 was highly critical of the sanctions policy, and the OAU conflict resolution committee called on 18 December 1998 for the policy to be abandoned. On 9 July 1998, the International Association of French Speaking Parliamentarians (now called the Assembly of Francophone Parliaments) issued a press communiqué stating that the "embargo has no consequence, apart from inflicting supplementary sufferings on the people of Burundi, who are already suffering".

85. At a 15 December 1998 press conference, the UNDP Resident Representative and Humanitarian Coordinator in Burundi said that the sanctions imposed on Burundi were a blunt instrument that had had a disproportionate impact on the poor and most vulnerable segments of that country's population.[78] An Office for the Coordination of Humanitarian Affairs (OCHA) report of the same month backs up the conclusion, stating: "In the case of Burundi, the

importation of food, seeds, fertilizers and fuel for the distribution of humanitarian relief was delayed for months causing the suspension of vital programmes of assistance to vulnerable groups, especially among the internally displaced populations."[79]

4. Burundi sanctions and international law

86. Regionally imposed sanctions are permitted under the Charter of the United Nations,[80] as long as they do not violate the Purposes and Principles of the United Nations. As the "six-prong test" for sanctions is essentially an extrapolation of those Purposes and Principles, regional sanctions are also explicitly subject to the tests laid out earlier. Although the States imposing the sanctions against Burundi may have believed that they had valid reasons for imposing them, the sanctions failed every other one of the tests, for the reasons outlined above, and are thus illegal.

C. Cuba

87. After almost half a century, the United States unilateral sanctions against Cuba are still being tightened, and still have not achieved their goal. It has been in the past decade that Cuba has really felt the brunt of the sanctions regime as, with the collapse of the Soviet Union and the dissolution of the Communist bloc, Cuba has lost its main trading partners and markets for its sugar crop. It is essential that these sanctions be examined now and action taken upon them so as to avert the negative effects witnessed in Iraq.

1. Implementation of sanctions

88. A unilateral trade embargo was imposed on Cuba by the United States in 1960 and was subsequently amended by the Cuban Democracy Act of 1992, the Helms-Burton Act of 1996, and other legislative and executive acts. Together, these acts essentially ban all commercial ties between the United States and Cuba and severely impair the right of United States citizens to travel to, communicate with or carry out cultural exchanges with Cuba.

89. The Cuban Democracy Act bars from the United States market for six months any merchant ship that stops at a Cuban port and prohibits trade between Cuba and the foreign subsidies of United States companies. Nearly 90 per cent of this trade was in food and medicines, and implementation of the Act has caused a sharp increase in unmet medical needs.

90. The Helms-Burton Act allows for financial sanctions and lawsuits against foreign firms who use "formerly American property" in Cuba, although the President has not yet enforced this provision. The Act also requires United States representatives in all international financial institutions to categorically oppose loans to Cuba and bars from entry to the United States any foreign nationals involved in the "confiscation" of the property of United States citizens. In this context, the European Union has filed against the United States in the World Trade Organization.

2. Effects on civilians

91. The United States embargo, combined with the pressure on other countries not to do business with Cuba, has hit the citizens of Cuba hard, especially in the past decade. As it has no access to the nearby United States markets, Cuba is forced to look further afield for sources of

imports and for buyers for sugar. According to the Government, Cuba must pay above-market prices and tariffs on goods purchased and shipped from distant markets, and the blockade imposes onerous terms on credit and trade and blocks access to many goods and technologies. Garfield estimated that "the embargo on Cuba creates a virtual 'tax' of 30 per cent on all imports".[81]

92. In responding to the report of the Secretary-General on human rights and unilateral coercive measures,[82] the Government of Cuba outlined in some detail the effect of the United States blockade upon the country. In 1996, Cuba reported, it spent $43.8 million more on four basic items than it would have if the embargo had not been in place and, from 1993 to 1996, Cuban companies spent an additional $8.7 million on shipping medical imports from Asia, Europe and South America rather than from the neighbouring United States.[83] By 1998, the cumulative impact of the embargo had cost Cuba $67 billion.[84]

93. Health and nutrition have been two of the primary victims of the sanctions. In 1997, the American Association for World Health issued a highly critical report confirming that the embargo caused "malnutrition, poor water quality, and the denial of access to medical equipment and drugs" and amounted to "the deliberate blockading of the Cuban population's access to food and medicine".[85] As a result, reported one researcher, per capita protein and calorie availability declined by 25 and 18 per cent, respectively, from 1989 to 1992.[86] As a Harvard Medical School professor wrote in the New England Journal of Medicine, "The Cuban and Iraqi instances make it abundantly clear that economic sanctions are, at their core, a war against public health".[87] For example, the number of medications available in Cuba has dropped from 1,297 in 1991 to only 889. Also, since United States pharmaceutical companies develop most major new drugs, Cuban physicians have access to less than 50 per cent of new medicines.[88]

94. In a report to the General Assembly,[89] UNICEF referred to the embargo having an especially harmful effect on children. The percentage of low-weight births rose 19 per cent between 1989 and 1993, eliminating 10 years of progress.[90] Additionally, women's health services have suffered. The Committee on the Elimination of Discrimination against Women commented that the economic embargo had been an obstacle to women's progress, had made medicines and contraceptives difficult to obtain and therefore was particularly problematic for women.[91] Indeed, maternal mortality rose by 50 per cent in the period 1993-1994.[92]

3. The response to sanctions

95. Every year since 1992, the General Assembly has passed a resolution calling for an end to the embargo,[93] and every year the votes in favour of the resolution have increased. The count in 1992 was 59 in favour, 3 against and 71 abstentions, whereas the most recent vote, in 1999, tallied 155 in favour, 2 against and 8 abstentions.

96. In the course of the 1999 General Assembly debate on the issue, the representative of Mexico called the Helms-Burton Act unacceptable under international law and contrary to the principles of the Charter; the representative of the Lao's People's Democratic Republic said that the blockade was anachronistic and absurd; and the representative of Viet Nam reported that the embargo had caused huge material losses and economic damage to the Cuban people; there was no justification for the continuation of those hostile policies, even one day further. The

representative of Malaysia argued that, if it were to be consistent with its own values and traditions, the United States could not persist in its current policy against Cuba, which had a grave humanitarian impact on the lives of the Cuban people; the representative of Jamaica warned that the embargo against Cuba was a source of tension and carried the risk of conflict; the representative of South Africa noted that the embargo had caused huge material losses and economic damage to the people of Cuba; finally, the representative of Norway declared that Norway simply did not consider isolation through unilateral measures to be an appropriate response to the situation in Cuba.[94]

97. The Helms-Burton Act has been condemned by the European Parliament[95] and more recently by 59 Governments and 8 United Nations organs and agencies in a report by the Secretary-General (A/54/259) on the implementation of General Assembly resolution 53/4. The Government of Cuba also has stepped up its campaign to have the embargo lifted: in September 1999, it demanded that the United States officials responsible be legally punished with sanctions and imprisonment.[96] It has also stated that it will sue the United States for $100 billion in damages for the sanctions.[97]

4. Cuban sanctions and international law

98. Unilateral economic sanctions, per se, are not illegal, as every country has the right to trade or not to trade with whomever it deems fit. However, in the Cuban case, the sanctions regime imposed by the United States violates human rights law in two distinct ways.

99. First, the fact that the United States is the major regional economic power and the main source of new medicines and technologies means that Cuba is subject to deprivations that impinge on its citizens' human rights. Although the United States has jurisdiction over its trade policy, this policy is subject to human rights considerations, and a trade policy, even a unilateral trade policy, that causes grave, systematic violations of human rights is in violation of international law.

100. Second, the United States has attempted, through various Acts passed in the past decade, to extraterritorialize its own foreign trade policy. Through a system of secondary sanctions, the United States has tried to force third-party countries into embargoing Cuba as well. This is not only a violation of trade law, but also an attempt to turn a unilateral embargo into a multilateral embargo through coercive measures, the only effect of which will be to deepen further the suffering of the Cuban people and increase the violation of their human rights.

V. FINAL REMARKS, CONCLUSIONS AND RECOMMENDATIONS

101. The question of legality, especially in terms of human rights and humanitarian law, has been at best peripheral to the international dialogue on sanctions. Thus, the Sub-Commission's attention to this issue could have great influence in the ongoing debate. Accordingly, the present discussion of sanctions is placed on as firm a foundation as possible in the overall context of established human rights and humanitarian law norms. Even so, as in any new area of the Sub-Commission's work, one report cannot set out all concerns.

102. The obligation to evaluate on a continual basis every proposed or ongoing sanctions regime now exists as a binding feature of international law. Therefore, in spite of the restrictions imposed on the scope of the present working paper, some operational guidelines for implementation of this obligation should be set out.

103. Any sanctions-imposing body, whether the United Nations Security Council, regional inter-governmental organizations, groups of countries or a single country, should ensure that a sanctions regime passes the six-prong test prior to implementation. A proposed sanctions regime that does not pass the six-prong test should not be imposed, or if imposed should be immediately moderated.

104. However, there are situations where a sanctions regime that may initially be deemed acceptable subsequently fails the test. Accordingly, sanctions regimes should always be under periodic review, generally at intervals of no longer than every six months.

105. When serious allegations of violations under a sanctions regime are brought to the attention of the sanctions-imposing body, that body should be deemed to have received "notice" and accordingly should undertake immediate review of and make appropriate adjustments to the sanctions regime. A sanctions regime deemed to have gone on too long and with inadequate results should be ended.

106. The full array of legal remedies should be available for victims of sanctions regimes that are at any point in violation of international law, if the imposer refuses to alter them. In this light the relevance of the Sub-Commission study on compensation[98] and ongoing initiatives in this area should be pointed out. Thus, complaints against specific sanctions-imposing countries could be lodged by either a civilian victim or the sanctioned country itself in a national court, in a United Nations human rights body having competence over the matter, or in a regional body. A sanctioned country could also bring an action before the International Court of Justice providing that the requisite declarations have been made pursuant to article 36, paragraph 2, of the Court's Statute.

107. Difficulties in regard to remedies for civilian victims arise when the sanctions are imposed by the United Nations itself or by a regional body. Victims may not be able to file directly against the entity itself. However, the sanctions-imposing entity may still be in violation of international norms. What is needed is for these entities - the Security Council, regional governmental organizations or regional defence pacts - to establish special mechanisms or procedures for relevant input from non-governmental sources regarding sanctions, including, especially, civilian victims.

108. The sanctioning body and the international community as a whole should respond with appropriate humanitarian aid to undo the damage as much as possible when a sanctions regime has severe adverse consequences. Attention should also be given to long-term effects.

109. Sanctions regimes that clearly violate international law, especially human rights and humanitarian law, need not be respected. This is especially true when the imposers are clearly on notice of those violations and have undertaken no effective modification. Sanctions are now

imposed with no consideration whatsoever of their legal status. In these situations, humanitarian tragedy must be viewed as constituting an "override" to an unduly harsh economic sanctions regime - analogous to the doctrine of force majeure. And, as already set out, the degree of public outcry is a factor in determining whether a sanctions regime is too harsh.[99]

A. Specific recommendations to United Nations bodies

1. The United Nations as a whole should give priority attention to the issue of the adverse consequences of economic sanctions and, as a minimum, should incorporate the proposed six-prong test in all deliberations on sanctions. Mechanisms for the provision of information from a wide array of sources regarding adverse effects of economic sanctions should be established in all bodies. This information should be presumed to be submitted in good faith.

2. All agencies and mechanisms involved with countries in which sanctions are imposed should address adverse consequences in the light of the six-prong test.

3. International treaty bodies involved with reviewing any situation in which sanctions are imposed should also evaluate their effect in the light of the six-prong test.

4. Working groups and special rapporteurs of the Commission on Human Rights, especially those reporting directly on a specific country where a sanctions regime is imposed, should evaluate the sanctions regime in the light of the six-prong test.

5. The Sub-Commission should consider review of current sanctions regimes as a permanent part of its agenda, under the most appropriate item. The Sub-Commission may therefore wish to consider appointing one of its members to undertake an annual review, in the light of the six-prong test proposed, of current sanctions regimes for submission to the Commission on Human Rights. Alternatively, the Sub-Commission may wish to ask the Commission to appoint a special rapporteur on this topic.

B. Recommendations to non-governmental organizations and victims of sanctions

1. Non-governmental organizations having information regarding the adverse effects of economic sanctions on a particular country should bring this information to the attention of the Sub-Commission and the Commission and other relevant United Nations bodies.

2. Victims of sanctions having adverse consequences should bring their complaints to relevant national, international and regional bodies.

3. Non-governmental organizations having information regarding the adverse consequences of economic sanctions should assist, within their mandates, victims of these sanctions to raise complaints in the relevant national or international bodies.

Notes

[1] The Sub-Commission's concern about time limitations to sanctions is particularly reflected in paragraph 1 of resolution 1997/35, in which the Sub-Commission appealed to all States to reconsider their adoption of or support for economic sanctions if after a reasonable period they appeared not to be bringing about the desired changes in policy.

[2] See annual decisions of the Sub-Commission since 1994: decision 1994/111 of 25 August 1994, decision 1995/107 of 18 August 1995, decision 1996/107 of 20 August 1996, decision 1997/119 of 28 August 1997, decision 1998/114 of 26 August 1998, decision 1999/110 of 26 August 1999.

[3] The Sub-Commission's previous expressions of concern about the human rights situation in Burundi are to be found in its resolutions 1994/17 of 25 August 1994 and 1995/11 of 18 August 1995.

[4] The exception to this is, of course, the debates in the Sub-Commission and Commission, as well as in reports circulated at the Sub-Commission and Commission by human rights NGOs. See, e.g., Karen Parker and Alexandra Menegakis, Memorandum: Sanctions in Light of Human Rights and Humanitarian Law (International Educational Development/Humanitarian Law Project, 1998); oral statements by, among others, the American Association of Jurists, Centre Europe-Tiers Monde, the General Arab Women's Federation, the Women's International League for Peace and Freedom, North-South XXI, the Union of Arab Jurists and International Educational Development; and joint oral statements by as many as 21 NGOs. Written statements include: E/CN.4/Sub.2/1996/NGO/7; E/CN.4/Sub.2/1998/NGO/24; and E/CN.4/1999/NGO/119.

[5] Interlaken Expert Seminars I and II on Targeting United Nations Financial Sanctions, 17-19 March 1998 and 29-31 March 1999.

[6] There may also be internal travel restrictions that keep journalists or aid workers out of conflict zones or other areas. While not strictly sanctions, these travel bans also have a negative effect on human rights and can violate humanitarian law.

[7] This primary rule is analogous to the primary rule of humanitarian law: the means of warfare are not unlimited, as first expressed in The Hague Convention of 1907, Annex, Regulations, Article 22: "The right of belligerents to adopt means of injuring the enemy is not unlimited".

[8] The Charter does not grant the General Assembly the power to impose sanctions. See Charter, Chapter IV.

[9] If the Security Council considers that Article 41 measures have proved inadequate, Article 42 provides for more serious measures, such as blockades and the use of force.

[10] The 26th International Conference of the Red Cross and Red Crescent commented that the imposition of sanctions can result in a "contradiction" by causing threats to peace or violations of human rights while intending the opposite.

[11] Regarding the right to life, potential implications of genocide could arise from a particularly harsh sanctions regime, especially when the imposing entity has been made amply aware of a significant loss of life and its response has been grossly inadequate.

[12] General Assembly resolution 2625 (XXV) of 24 October 1970.

[13] General Assembly resolution 3281 (XXIX) of 12 December 1974.

[14] General Assembly resolution 1803 (XVII) of 14 December 1962.

[15] Endorsed by the General Assembly in its resolution 3348 (XXIX) of 17 December 1974.

[16] In discussing limitations to sanctions inherent in human rights law, it should be borne in mind that much of human rights law is universally considered jus cogens, thus necessarily imposing limits, including making any contravening sanctions void. In this light, the doctrine of erga omnes is also relevant.

[17] Proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 4 November 1966.

[18] As humanitarian law is, like human rights law, considered jus cogens, sanctions in contravention of humanitarian law are also void.

[19] See, for example, 26th International Conference of the Red Cross and Red Crescent, "Humanitarian consequences of economic sanctions", in Principles and Response in International Humanitarian Assistance and Protection (1995): "Any sanction regime established in the context of armed conflict is governed by international humanitarian law, which requires that the survival and essential needs of the civilian population be ensured." Extreme sanctions could also be considered a weapon of war in themselves.

[20] Convention IV respecting the Laws and Customs of War on Land and its annex: Regulations respecting the Laws and Customs of War on Land; available at International Committee of the Red Cross Web page, <http //www.icrc.org>.

[21] See Geneva Conventions of 1949, I, article 63; II, article 62; III, article 142; IV, article 158; and Additional Protocol I, article 1, paragraph 2.

[22] Common Article (I,7; II,7; III,7; IV,8) of the Geneva Conventions of 1949.

[23] See, for example, General Assembly resolutions 2675 (XXV) and 2677 (XXV), adopted in 1970, and 3318 (XXIX), adopted in 1974.

[24] For example, certain States in the United States have imposed economic boycotts against Myanmar. Also, during the period of the United Nations imposed sanctions against the apartheid regime of South Africa a number of States and city governments in the United States followed the United Nations mandates even though the federal Government did not.

[25] This working paper does not address the "trade wars" issue, involving the imposition of bans on certain products by certain countries to obtain an advantage in trade disputes.

[26] The "third party" issue is prominent in the international dialogue on sanctions. Obviously, a party that is not involved in the wrong should not suffer any consequences of another party's wrongs.

[27] This issue was prominent in the debate over sanctions in Burundi and those still in effect against Iraq and Cuba. Even after the lifting of sanctions in Burundi, there continues to be a humanitarian catastrophe due to the breakdown of the food distribution infrastructure, delays in immunizations and the general impoverishment of so many civilians due to the sanctions. In Iraq, reports indicate that more than a generation will be necessary to bring medical, educational and food infrastructures back up to their pre-sanctions levels.

[28] "[T]he humanitarian impact of sanctions hardly can be seen as 'collateral damage' ... [o]n the contrary, the proper management of the humanitarian impact of sanctions appears central to an efficient management of sanctions and, therefore, to their success." Claude Bruderlein, Coping with the Humanitarian Impact of Sanctions: An OCHA Perspective, Office for the Coordination of Humanitarian Affairs (OCHA), United Nations, New York, December 1998, p. 4.

[29] Millennium Report of the Secretary-General of the United Nations, "We the Peoples": The Role of the United Nations in the 21st Century, United Nations Department of Public Information, New York, 2000, p. 50.

[30] The primary study is Gary Clyde Hufbauer, Jeffrey J. Schott and Kimberly Ann Elliott, Economic Sanctions Reconsidered, 2nd ed., revised, Institute for International Economics, Washington, 1990. A re-examination of the data is provided in J. Dashti-Gibson, P. Davis, and B. Radcliff, "On the determinants of the success of economic sanctions: an empirical analysis" (1997), in American Journal of Political Science 41(2)608-618. A highly critical assessment of the Hufbauer, Schott and Elliott study is found in Robert A. Pape, "Why economic sanctions still don't work", International Security, Summer 1998. Elliot's position is found in "The sanctions glass: half full or completely empty", International Security, Summer 1998. An even more damning assessment of sanctions is provided by Kim Richard Nossal, "Liberal democratic regimes, international sanctions and global governance", unpublished manuscript, McMaster University, 1988, p. 20 (cited in "UN sanctions: how effective? How necessary", by the Strategic Planning Unit, Executive Office of the Secretary-General, United Nations, New York, March 1999, published in Interlaken II Proceedings, pp. 101-115. This essay also provides a good summary of the debate.)

[31] Nossal, op. cit., p. 20.

[32] Elliott, op. cit., p. 189.

[33] See J. Dashti-Gibson, P. Davis, and B. Radcliff, op. cit.

[34] Koenraad Van Brabant, "Can sanctions be smarter? The current debate", Report on Conference of 16-17 December 1998, the Humanitarian Policy Group and the Relief and Rehabilitation Network at the Overseas Development Institute, London, p. 6.

[35] Hans Kochler, "Ethical aspects of sanctions in international law: the practice of the sanctions policy and human rights", International Progress Organization research paper, <http://i-p-o.org/sanctp.htm>.

[36] The development of the smart sanctions dialogue has included the Copenhagen Round Table (24-25 June 1996), the NGO-sponsored Symposium on Targeted Sanctions, in New York in December 1998; a conference in London on smart sanctions, sponsored by the Overseas Development Institute (ODI), 16-17 December 1998; a colloquium in Geneva sponsored by the Graduate Institute of International Studies entitled "United Nations sanctions and international law", 23-25 June 1999; a seminar entitled "Smart sanctions, the next step: arms embargoes and travel sanctions", 21-23 November 1999, in Bonn, Germany, sponsored by the Bonn International Centre for Conversion (BICC); the two Interlaken Expert Seminars, held in March 1998 and March 1999; and the International Peace Academy Seminar on Sanctions, New York, 17 April 2000. Significant work has also been done by the Humanitarianism and War Project at Brown University, and by the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame, and the Fourth Freedom Forum, in Goshen, Indiana.

[37] See especially pp. 49-50.

[38] In its resolution 666 (1990), the Security Council established that the Security Council and its Sanctions Committee had the sole power to determine whether humanitarian circumstances mandated the provision of foodstuffs.

[39] Press release SG/SM/7338 (24 March 2000).

[40] UNICEF press release CF/DOC/PR/1999/29 (12 August 1999). UNICEF Executive Director Carol Bellamy said at the press conference that the findings reveal "an ongoing humanitarian emergency".

[41] Richard Garfield, "Morbidity and mortality among Iraqi children from 1990 through 1998: assessing the impact of the Gulf war and economic sanctions", unpaginated, July 1999, available on Campaign Against Sanctions on Iraq webpage, < http://www.cam.ac.uk/societies/casi>.

[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] "Report of the second panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100), concerning the current humanitarian situation in Iraq", S/1999/356, annex II (30 March 1999).

[46] Report of the Secretary-General pursuant to paragraph 4 of resolution 1143 (1997) (S/1998/477), 5 June 1998.

[47] Press release SG/SM/7338 (24 March 2000).

[48] UNICEF, Situation Analysis of Children and Women in Iraq, Baghdad, 30 April 1998, quoted in Garfield, "Morbidity ..."

[49] S/1999/356, annex II.

[50] Speech delivered by Denis Halliday on Capitol Hill, 6 October 1998. From Campaign Against Sanctions on Iraq webpage <http://www.cam.ac.uk/societies/casi/halliday/quotes.html>.

[51] See Nadje Al-Ali, "Sanctions and women in Iraq", "Sanctions on Iraq: background, consequences, strategies", in Proceedings of Conference sponsored by Committee Against Sanctions on Iraq, 13-14 November, Cambridge, pp. 73-84.

[52] Press release SG/SM/7338 (24 March 2000).

[53] Independent, 15 October 1998.

[54] Reuters, "Top UN official leaves Iraq, says programme failed", 17 February 2000.

[55] Washington Post, "Aide who quit in protest plans report on airstrikes on Iraq", 17 February 2000.

[56] See note 4, above.

[57] Ramsey Clark, although among many, is perhaps one of the most famous individuals to have personally defied the blockade.

[58] For an in-depth discussion of genocide and other possible violations of international human rights and humanitarian law, see Elias Davidsson, "The economic sanctions against the people of Iraq: consequences and legal findings", available at: <http://www.juscogens.org>, or <http://www.lancs.ac.uk/ug/greenrd/project/elias.htm>.

[59] "Punishing Saddam", in 60 Minutes, 12 May 1996. The interview went as follows: Lesley Stahl (referring to sanctions against Iraq): "We have heard that a half million children have died. I mean, that's more children than died in Hiroshima. And, and you know, is the price worth it?" Madeleine Albright: "I think this is a very hard choice, but the price, we think the price is worth it."

[60] See the section entitled "Limitations to sanctions in humanitarian law" of the present working paper.

[61] Eric Hoskins and Samantha Nutt, The Humanitarian Impacts of Economic Sanctions on Burundi, Occasional Paper No. 29, The Thomas J. Watson Jr. Institute for International Studies, Brown University, 1997, p. 43.

[62] Cited in Hoskins and Nutt, op. cit., p. 105.

[63] For a complete list of exemptions, see table 3.1: "Chronology of exemption requests and authorizations", in Hoskins and Nutt, pp. 46-47.

[64] World Food Programme, press release, 23 January 1999.

[65] See, along with Hoskins and Nutt, Gregory M. Salter, An Assessment of Sanctions against Burundi, ActionAid, London, May 1999. He supports many of their conclusions and brings the study up to date.

[66] Hoskins and Nutt, op. cit., p. 24.

[67] Ibid., p. 95.

[68] See International Crisis Group, "The Mandela effect: prospects for peace in Burundi", ICG Central Africa Report No. 13, Bujumbura/Nairobi, 18 April 2000, for an account of the current economic and social crisis, especially pp. 60-62.

[69] Salter, op. cit. p. 30.

[70] The magnitude of this catastrophe was attested to in the Security Council's open debate on Burundi on 12 November 1999. See press release SC/6753.

[71] World Food Programme, press release, 23 January 1999.

[72] Hoskins and Nutt, op. cit., p. 106.

[73] World Food Programme, "FAO/WFP Crop and Food Supply Assessment", Section 5, 4 March 1997.

[74] Hoskins and Nutt, op. cit., p. 108.

[75] Report of the Special Rapporteur, Mr. Paulo Sergio Pinheiro (E/CN.4/1998/72), paras. 80-83.

[76] Salter, op. cit., p. 4.

[77] See "Burundi: sanctions" under Written Answers, Record of House of Lords, 15 October 1998, column WA122.

[78] UNDP press release, 16 December 1998.

[79] Claude Bruderlein, Coping with the Humanitarian Impact of Sanctions: An OCHA perspective, OCHA, New York, December 1998, p. 6.

[80] See section entitled "Understanding sanctions: the basics" of the present working paper.

[81] Richard Garfield, "The Impact of the Economic Crisis and U.S. Embargo on Health in Cuba", American Journal of Public Health 87, No. 1 (1997), pp. 15-20.

[82] E/CN.4/1996/45.

[83] American Association for World Health, "Summary of findings", March 1997.

[84] Press release GA/9654, 9 November 1999.

[85] American Association for World Health, "Denial of food and medicine: the impact of the U.S. embargo in health and nutrition in Cuba", (1997). The report continues: "After a year-long investigation, the American Association for World Health has determined that the U.S. embargo of Cuba has dramatically harmed the health and nutrition of large numbers of ordinary Cuban citizens. As documented by the attached report, it is our expert medical opinion that the U.S. embargo has caused a significant rise in suffering - and even deaths - in Cuba. For several decades the U.S. embargo has imposed significant financial burdens on the Cuban health care system. But since 1992 the number of unmet medical needs, patients going without essential drugs or doctors performing medical procedures without adequate equipment has sharply accelerated. This trend is directly linked to the fact that in 1992 the U.S. trade embargo - one of the most stringent embargoes of its kind, prohibiting the sale of food and sharply restricting the sale of medicines and medical equipment - was further tightened by the 1992 Cuban Democracy Act. A humanitarian catastrophe has been averted only because the Cuban government has maintained a high level of budgetary support for a health care system designed to deliver primary and preventive health care to all of its citizens."

[86] Garfield, "The Impact ...".

[87] Leon Eisenberg, "The sleep of reason produces monsters - human costs of economic sanctions", New England Journal of Medicine, 24 April 1997, vol. 336, No. 17.

[88] American Association for World Health, op. cit.

[89] A/52/342 and Corr.1.

[90] Garfield, "The Impact ...".

[91] Cited in Report on the situation of human rights in Cuba, submitted by the Special Rapporteur, Mr. Carl-Johan Groth (E/CN.4/1998/69).

[92] Garfield, "Morbidity ...".

[93] United Nations resolutions against the United States embargo on Cuba: 47/19 of 24 November 1992, 48/16 of 3 November 1993, 49/9 of 26 October 1994, 50/10 of 2 November 1995, 51/17 of 12 November 1996, 52/10 of 5 November 1997, 53/4 of 4 October 1998 and 54/21 of 18 November 1999. The most recent of those resolutions reads, in part:

> "Concerned about the continued promulgation and application by Member States of laws and regulations, such as that promulgated on 12 March 1996 known as the 'Helms-Burton Act', the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation,
>
> Taking note of declarations and resolutions of different intergovernmental forums, bodies and Governments that express the rejection by the international community and public opinion of the promulgation and application of regulations of the kind referred to above, concerned also about the adverse effects of such measures on the Cuban people, ...".

[94] Press release GA9654, 9 November 1999.

[95] San Francisco Chronicle News Service, "U.S. law on Cuba condemned", 15 March 1996.

[96] Associated Press, "Cuba calls for sanctions against US", byline Anita Snow, 13 September 1999.

[97] Press release GA9654, 9 November 1999.

[98] Theo van Boven, "Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms", Final report (E/C.4/Sub.2/1993/8). See also Preliminary report (E/C.4/Sub.2/1990/10), Progress report (E/C.4/Sub.2/1991/7) and Second progress report (Sub.2/1992/8).

[99] Unfortunately, persons opposed to a sanctions regime on humanitarian grounds and who act to provide humanitarian relief to victims may risk arrest or other persecution. These persons should, at least, be able to raise the illegality of sanctions on humanitarian grounds as a defence in any proceedings against them. There are increasing acts in defiance of the Iraqi sanctions. To date, those who have "broken" the sanctions have faced little legal penalty, but if defiant acts increase and the sanctions remain, this issue could come to the fore.

Annex I

OTHER SANCTIONS REGIMES

A. Use of sanctions under Chapter VII of the Charter of the United Nations

(From a report compiled by the Office of the Spokesman for the Secretary-General, 31 March 2000)

The Security Council has invoked Chapter VII of the Charter of the United Nations to impose sanctions in 14 cases: Afghanistan, Angola, Federal Republic of Yugoslavia/Kosovo, Haiti, Iraq, Liberia, Libyan Arab Jamahiriya, Rwanda, Sierra Leone, Somalia, South Africa, Southern Rhodesia, Sudan and former Yugoslavia. In the case of Haiti, South Africa, Southern Rhodesia and the former Yugoslavia sanctions have been fully lifted and in the case of Libya they were suspended.

1. Afghanistan

In its resolution 1267 (1999) of 15 October 1999, the Security Council demanded that the Taliban turn over Usama bin Laden without further delay to the appropriate authorities. Since this demand of the Security Council was not met, the prohibitions contained in paragraph 4 of the resolution, i.e. a flight ban on any aircraft owned, leased or operated by or on behalf of the Taliban, as well as a freeze on funds directly or indirectly owned or controlled by the Taliban, entered into effect on 14 November 1999.

2. Angola

In its resolution 864 (1993) of 15 September 1993, the Security Council imposed an oil and arms embargo on the National Union for the Total Independence of Angola (UNITA).

In its resolution 1127 (1997) of 28 August 1997, the Security Council imposed restrictions on the travel of senior officials of UNITA and adult members of their immediate families, the closure of all UNITA offices and the prohibition of flights or servicing of aircraft by or for UNITA. Humanitarian exemptions were allowed.

In its resolution 1173 (1998) of 12 June 1998, the Security Council froze all UNITA foreign assets, prohibited all official contacts with UNITA in designated areas, prohibited the import of diamonds not controlled through the Certificate of Origin regime of the GURN, and prohibited the sale of mining equipment and motorized vehicles and spare parts to UNITA.

Case-by-case humanitarian exemptions were allowed for. Resolution 1173 came into effect on 1 July 1998.

3. Federal Republic of Yugoslavia/Kosovo

In its resolution 1160 (1998) of 31 March 1998, the Security Council imposed an arms embargo on the Federal Republic of Yugoslavia.

In its resolution 1199 (1998) of 23 September 1998, the Security Council requested States to pursue all means consistent with their domestic legislation and relevant international law to prevent funds collected on their territory being used to contravene resolution 1160.

4. Haiti

In its resolution 841 (1993) of 16 June 1993, the Security Council imposed an arms and oil embargo on Haiti and froze its foreign assets. The embargo was suspended on 27 August 1993 by resolution 861 (1993) and then reimposed on 18 October 1993 by resolution 873 (1993) of 13 October 1993.

In its resolution 917 (1994) of 6 May 1994, the Security Council expanded the embargo to include all commodities and products, with the exception of medical supplies and foodstuffs. The expanded embargo went into effect on 21 May 1994.

In accordance with its resolution 944 (1994) of 29 September 1994, the Security Council terminated the measures relating to sanctions set out in resolutions 841 (1993), 873 (1993) and 917 (1994) on 16 October 1994.

5. Liberia

In its resolution 788 (1992) of 19 November 1992, the Security Council imposed an arms embargo on Liberia.

6. The Libyan Arab Jamahiriya

In its resolution 748 (1992) of 31 March 1992, the Security Council imposed an arms and air embargo on the Libyan Arab Jamahiriya and a reduction of Libyan diplomatic personnel serving abroad.

In its resolution 883 (1993) of 11 November 1993, the Security Council tightened sanctions, approving the freezing of Libyan funds and financial resources in other countries and banning the provision to the Libyan Arab Jamahiriya of equipment for oil refining and transportation.

The Security Council, at its 3992nd meeting, held on 8 April 1999, adopted a presidential statement (S/PRST/1999/10), in which it noted that the conditions for suspending the wide range of aerial, arms and diplomatic measures against the Libyan Arab Jamahiriya had been fulfilled as of 5 April 1999.

7. Rwanda

In its resolution 918 (1994) of 17 May 1994, the Security Council imposed an arms embargo on Rwanda.

In its resolution 1011 (1995) of 16 August 1995, the Security Council decided to suspend the arms embargo until 1 September 1996, with the stipulation that the Government of Rwanda would be required to notify the Committee of all of its arms imports. Countries exporting to Rwanda were also required to notify the Committee.

In accordance with resolution 1011 (1995), the Security Council terminated restrictions on the sale/supply of arms and related material to the Government of Rwanda effective 1 September 1996. However, the sale and supply of arms and related material to non-governmental forces for use in Rwanda remain prohibited.

8. Sierra Leone

In its resolution 1132 (1997) of 8 October 1997, the Security Council imposed an oil and arms embargo on Sierra Leone, as well as restrictions on the travel of members of the military junta of Sierra Leone.

In its resolution 1156 (1998) of 16 March 1998, the Security Council terminated, with immediate effect, the prohibitions on the sale or supply to Sierra Leone of petroleum and petroleum products referred to in paragraph 6 of resolution 1132 (1997).

In its resolution 1171 (1998) of 5 June 1998, the Security Council terminated the arms embargo against the Government of Sierra Leone, keeping it in force, however, against all non-governmental forces in the country. It also put travel restrictions on leading members of the former military junta and of the Revolutionary United Front (RUF).

9. Somalia

In its resolution 733 (1992) of 23 January 1992, the Security Council imposed an arms embargo on Somalia.

10. South Africa

In its resolution 418 (1977) of 4 November 1977, the Security Council imposed an arms embargo on South Africa. In its resolution 919 (1994) of 25 May 1994, the Security Council terminated the arms embargo and other restrictions imposed on South Africa by resolution 418 (1977).

11. Southern Rhodesia

In its resolution 232 (1966) of 16 December 1966, the Security Council imposed sanctions on commodities in addition to oil. The sanctions were lifted in resolution 460 (1979) of 21 December 1979.

12. Sudan

In its resolution 1054 (1996) of 26 April 1996, the Security Council decided that diplomatic sanctions would be placed on the Sudan. They came into effect on 10 May 1996.

In its resolution 1070 (1996) of 16 August 1996, the Security Council decided to impose an air embargo on the Sudan; however, the sanctions measures adopted, which were to enter into force pending a decision by the Council within 90 days after the date of the adoption of resolution 1070 (1996), were not imposed, for humanitarian reasons.

13. The former Yugoslavia

In its resolution 713 (1991) of 25 September 1991, the Security Council imposed a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia.

In its resolution 757 (1992) of 30 May 1992, the Security Council imposed economic and other sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro), including a full trade embargo, a flight ban and the prevention of the participation of the Federal Republic of Yugoslavia in sporting and cultural events.

In its resolution 787 (1992) of 16 November 1992, the Security Council stated that the transshipment through the Federal Republic of Yugoslavia of petroleum, coal, steel and other products, unless authorized on a case-by-case basis by the Sanctions Committee, would be prohibited. In resolution 820 (1993) of 17 April 1993, the Council further strengthened the sanctions against the Federal Republic of Yugoslavia.

In its resolution 942 (1994) of 23 September 1994, the Security Council imposed comprehensive economic and diplomatic sanctions on Bosnian Serb military forces.

In its resolution 943 (1994) of 23 September 1994, the Security Council suspended the travel ban and the participation of the Federal Republic of Yugoslavia in sports and cultural exchanges, for 100 days beginning 5 October 1994.

In its resolution 1022 (1995) of 22 November 1995, the Security Council indefinitely suspended the sanctions against the Federal Republic of Yugoslavia. In resolution 1074 (1996) of 1 October 1996, the Council decided to terminate sanctions against the Federal Republic of Yugoslavia and the Bosnian Serbs.

Update to sanctions under Chapter VII

14. Eritrea and Ethiopia

In its resolution 1298 (2000) of 17 May 2000, the Security Council imposed an arms embargo on the two warring States and established a sanctions committee.

B. Relevant non-Security Council sanctions

1. The Islamic Republic of Iran

The United States has maintained broad economic sanctions against Iran since 1984, and a near-total ban on United States imports from Iran since late 1987. The Iran and Libya Sanctions Act of 1996 expanded the ban by allowing economic sanctions on foreign companies that invest more than $40 million in the oilfield industry. The sanctions prevent these companies from obtaining funding from United States financial markets. Other countries, primarily in the European Union, have implemented trade sanctions designed to limit access by Iran to nuclear, chemical and biological weapons, products and technologies. Several European countries have asked the United States to lift sanctions against Iran.

2. The Libyan Arab Jamahiriya

In addition to the Security Council sanctions (see above), the United Kingdom and the United States have imposed an air blockade and additional economic sanctions since 1986. These include the freezing of Libyan assets held in the United States and the prohibition of Libyan oil imports and United States foreign investment in Libya. The Iran and Libya Sanctions Act of 1996 allows for economic sanctions against foreign firms doing business in the United States that also do business in Libya.

In 1997, Egypt, Kenya and Guinea-Bissau formally requested the elimination of the sanctions, because of the suffering caused to the Libyan people. Further allegations of hardship have been raised not only by Governments but also by such groups as the Carnegie Center, which has stated that "despite continued oil revenue, three years of sanctions have hurt the Libyan economy, contributing to an unemployment rate of around 30%". The Government of Libya asserts that the sanctions violate the right to development, the right to medical care, the right to travel, the freedom of religion (the air blockade restricts the ability of Libyans to travel to Mecca for religious purposes) and a number of other economic, social and cultural rights.

3. Myanmar

The United States imposed limited economic sanctions against the State Law and Order Restoration Committee (SLORC) regime in July 1996. The policy prohibits new investment in, government bilateral assistance to, and international finance institution assistance to Myanmar. Exceptions include humanitarian assistance, counter-narcotics assistance and aid that promotes human rights and democratic values. A number of states of the United States and local governments have also instituted boycotts and limited economic sanctions against the illegitimate regime.

4. Sudan

The United States imposed comprehensive sanctions against the Sudan in November 1997 for alleged sponsorship of international terrorism, ongoing efforts to destabilize neighbouring Governments and human rights abuses, including slavery and the denial of religious freedom. The sanctions blocked all Sudanese assets in United States financial transactions, imposed a comprehensive ban on trade between the United States and the Sudan, and prohibited all United States investment in the Sudan. The 1997 sanctions exempt humanitarian, diplomatic and journalistic activities.

Annex II

UNITED NATIONS RESOLUTIONS CONCERNING ECONOMIC SANCTIONS AND PARTICULAR SANCTIONS REGIMES

A. General Assembly resolutions

Unilateral coercive economic measures

54/200 (20 January 2000)

52/181 (18 December 1997)

50/96 (20 December 1995)

48/168 (21 December 1993)

46/210 (20 December 1991)

44/215 (22 December 1989)

Human rights and unilateral coercive measures

54/172 (15 February 2000)

53/141 (9 December 1998)

52/120 (12 December 1997)

51/103 (12 December 1996)

The United States embargo on Cuba

54/21 (18 November 1999)

47/19 (24 November 1992)

48/16 (3 November 1993)

49/9 (26 October 1994)

50/10 (2 November 1995)

51/17 (12 November 1996)

52/10 (5 November 1997)

53/4 (4 October 1998)

B. Commission on Human Rights resolutions

Human rights and unilateral coercive measures

1998/11 (9 April 1998)

1997/7 (3 April 1997)

1999/21 (23 April 1999)

1996/9 (11 April 1996)

1995/45 (3 March 1995)

1994/47 (4 March 1994)

1993/59 (9 March 1993)

1992/39 (28 February 1992)

1991/79 (6 March 1991)

Humanitarian impact of sanctions in Burundi

1998/82 (24 April 1998)

1997/77 (18 April 1997)

C. Resolutions and decisions of the Sub-Commission

Concern over economic sanctions and human rights

Decision 1999/111 (26 August 1999)

Decision 1998/112 (26 August 1998)

Resolution 1997/35 (28 August 1997)

Concern over the humanitarian impact of sanctions in Iraq

Decision 1999/110 (26 August 1999)

Decision 1998/114 (26 August 1998)

Decision 1997/119 (28 August 1997)

Decision 1996/107 (20 August 1996)

Decision 1995/107 (18 August 1995)

Decision 1994/111 (25 August 1994)

Concern over the humanitarian impact of sanctions in Burundi

Resolution 1996/4 (19 August 1996)

E/CN.4/Sub.2/2000/34

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Item 12 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Note by the Secretary-General

1. Pursuant to Sub-Commission resolution 5 (XIV), the present note reviews developments between 1 June 1999 and 1 June 2000 in fields with which the Sub-Commission has been previously concerned. It supplements those questions which are dealt with in the annotations to the provisional agenda for the fifty-second session of the Sub-Commission (E/CN.4/Sub.2/2000/1/Add.1).

I. INTERNATIONAL COVENANTS ON HUMAN RIGHTS

2. As at 1 June 2000, 143 States had ratified, acceded or succeeded to the International Covenant on Economic, Social and Cultural Rights. As at the same date, 144 States had ratified, acceded or succeeded to the International Covenant on Civil and Political Rights, 95 States had ratified or acceded to the Optional Protocol to the latter Covenant and 44 States had ratified or acceded to the Second Optional Protocol aiming at the abolition of the death penalty. On 27 March 2000, the Government of Trinidad and Tobago notified the Secretary-General of its decision to denounce the Optional Protocol. In accordance with article 12 of the Protocol, the denunciation of Trinidad and Tobago will take effect on 27 June 2000. With respect to article 41, paragraph 1, of the International Covenant on Civil and Political Rights, 97 States had made the declaration envisaged under that provision of the Covenant.

Human Rights Committee

3. At its sixty-sixth, sixty-seventh and sixty-eighth sessions, held in July and October-November 1999 and March 2000, respectively, the Committee considered 14 reports submitted by States parties under article 40 of the International Covenant on Civil and Political Rights.

4. At the three sessions, the Committee also adopted 22 views under article 5, paragraph 4, of the Optional Protocol to the Covenant, 5 decisions declaring complaints admissible and 19 decisions declaring complaints inadmissible. Four cases were discontinued without the Committee issuing a formal decision.

5. A report on the Committee's sixty-fourth to sixty-sixth sessions was submitted to the General Assembly at its fifty-fourth session (A/54/40) and a report on its sixty-seventh to sixty-ninth sessions will be submitted to the General Assembly following the Committee's sixty-ninth session in July 2000.

Committee on Economic, Social and Cultural Rights

6. At its twenty-first and twenty-second sessions, held in November-December 1999 and in April-May 2000, respectively, the Committee considered reports submitted by eight States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, as well as the situation in one country in the absence of a report from that State party. The Committee subsequently adopted its concluding observations thereon.

7. At its twenty-first and twenty-second sessions, as a follow-up to the days of general discussion on the right to education and the right to health, the Committee adopted General Comments No. 13 (1999) on the right to education (art. 13 of the Covenant) and No. 14 (2000) on the right to the highest attainable standard of health (art. 12 of the Covenant), respectively. Both general comments were drafted in conformity with the "Outline for drafting general comments on specific rights of the International Covenant on Economic, Social and Cultural Rights", which was formally adopted by the Committee at its twenty-first session (E/2000/22-E/C.12/1999/11, annex IX). The Committee expressed its particular appreciation to UNESCO and WHO for their cooperation with the Committee and their constructive contribution to the drafting of general comments at all stages of the drafting process.

8. At its twenty-first session, the Committee reiterated its request addressed to the Office of the High Commissioner for Human Rights (OHCHR) to consider the possibility of organizing a workshop to identify key right to education benchmarks and indicators which might be utilized by the Committee and by other United Nations treaty bodies and human rights organs, and United Nations specialized agencies and programmes. The workshop participants should include representatives of the Committee, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, UNESCO, UNICEF, WHO and UNDP. The Committee considered that such a workshop might be the first of a series of meetings designed to identify key benchmarks and indicators in relation to each of the rights in the Covenant.

The Committee's "Proposal for a workshop on indicators, benchmarks and the right to education" is contained in the report of the Committee on its twentieth and twenty-first sessions (E/2000/22-E/C.12/1999/11, annex VIII).

9. Also at its twenty-first session, the Committee adopted a "Statement of the Committee on Economic, Social and Cultural Rights to the Third Ministerial Conference of the World Trade Organization", in which the Committee, inter alia, urged WTO to undertake a review of the full range of international trade and investment policies and rules in order to ensure that these are consistent with existing treaties, legislation and policies designed to protect and promote all human rights (E/2000/22-E/C.12/1999/11, annex VII).

10. The Committee's report on its twentieth and twenty-first sessions (E/2000/22-E/C.12/1999/11) will be before the Economic and Social Council at its substantive session of 2000 in July.

II. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

11. As at 1 June 2000, 156 States had adhered to the International Convention on the Elimination of All Forms of Racial Discrimination. Thirty States parties had made the declaration under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of violation by those States parties of any of the rights set forth in the Convention.

Committee on the Elimination of Racial Discrimination

12. During its fifty-fifth and fifty-sixth sessions, held in August 1999 and March 2000 respectively, the Committee considered reports submitted by 24 States parties to the Convention. Additionally, the Committee reviewed the application of the Convention in four States parties whose reports were seriously overdue and adopted three decisions under its early-warning and urgent procedures.

13. The Committee discussed the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at each of its sessions. At its fifty-fifth session, the Committee adopted decision 5 (55), in which it gave suggestions as to the issues which could be included in an eventual plan of action for the Conference and listed a number of materials that the Committee could prepare to meet the needs of the Conference and the Preparatory Committee.

General Assembly

14. A report on the Committee's fifty-fourth and fifty-fifth sessions was submitted to the General Assembly at its fifty-fourth session (A/54/18) and a report on the Committee's fifty-sixth and fifty-seventh sessions will be submitted to the General Assembly at its fifty-fifth session following the Committee's fifty-seventh session in August 2000.

Commission on Human Rights

15. At its fifty-sixth session, the Commission on Human Rights adopted resolution 2000/14 on 17 April 2000, in which it addressed, inter alia, the International Convention on the Elimination of Racial Discrimination. The Commission on Human Rights appealed to States that had not yet done so to consider ratifying or acceding to the Convention; recommended that the issue of universal ratification of the Convention, as well as reservations thereto, and the competence of the Committee on the Elimination of Racial Discrimination to receive individual complaints be considered at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; called upon States parties that had not submitted initial or periodic reports in accordance with article 9 of the Convention to do so; urged States parties to limit the extent of any reservations they lodged to the Convention; called upon States parties to the Convention to adopt immediately positive measures aimed at the elimination of all forms of racial discrimination, xenophobia and related intolerance; requested States parties to the Convention to consider the possibility of making the declaration provided for in article 14 of the Convention; and invited States parties to ratify the amendment to article 8 of the Convention dealing with the financing of the Committee.

16. The Commission on Human Rights again invited the Committee on the Elimination of Racial Discrimination to participate actively in the preparatory process for the World Conference.

III. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

17. As at 1 June 2000, the Convention had been ratified or acceded to by 119 States.

Committee against Torture

18. The Committee submitted a report on its twenty-first and twenty-second sessions to the General Assembly at its fifty-fourth session (A/54/44). At its twenty-third and twenty-fourth sessions, held from 8 to 19 November 1999 and from 1 to 19 May 2000, respectively, the Committee against Torture considered 15 reports submitted by States parties under article 19 of the Convention. It also continued in closed meeting its activities under article 20 (inquiries) and 22 (individual communications) of the Convention. The Committee publicly announced that it had completed an inquiry. Furthermore, at its two sessions, the Committee considered a total of 24 communications. It took decisions to declare one communication admissible and six inadmissible. In addition, the Committee adopted views in respect of 11 communications and discontinued 6 communications. A report on the Committee's twenty-third and twenty-fourth sessions will be submitted to the General Assembly at its fifty-fifth session.

IV. CONVENTION ON THE RIGHTS OF THE CHILD

19. At its twenty-second, twenty-third and twenty-fourth sessions, held in September-October 1999, January 2000 and May-June 2000 respectively, the Committee considered 17 initial and 6 periodic reports submitted under article 44 of the Convention on the Rights of the Child.

20. At its twenty-second session, in view of the commemoration of the tenth anniversary of the adoption by the General Assembly of the Convention on the Rights of the Child in 1989, the Committee co-organized, with the Office of the High Commissioner for Human Rights, a two-day meeting entitled "The Convention on the Rights of the Child: a decade of achievements and challenges". Representatives of States parties, United Nations bodies, specialized agencies and other competent bodies, including non-governmental organizations, and children contributed to the discussion and provided expert advice.

General Assembly

21. At its fifty-fourth session, the General Assembly, in its resolution 54/149, took note of the important role of the Committee on the Rights of the Child in creating awareness of the Convention and providing recommendations to States parties on its implementation; called upon States parties to take appropriate measures so that acceptance of the amendment to the Convention on the Rights of the Child by a two-thirds majority of States parties could be reached as soon as possible; and further called upon States parties, in accordance with their obligations under article 42, to make the principles and provisions of the Convention widely known to adults and children alike. It also requested the Secretary-General to submit to the Assembly at its fifty-fifth session a report on the rights of the child, containing information on the status of the Convention and the problems addressed in the resolution, which focused, among other things, on children with disabilities, the prevention and eradication of the sale of children and of their sexual exploitation and abuse, including child prostitution and child pornography, the protection of children affected by armed conflict, refugee and internally displaced children, the progressive elimination of the exploitation of child labour and the plight of children living and/or working on the streets.

Commission on Human Rights

22. The Commission, at its fifty-sixth session, adopted resolution 2000/85 on the rights of the child, in which it addressed the implementation of the Convention on the Rights of the Child, protection and promotion of the rights of children, including such issues as identity, family relations and birth registration, health, education, freedom from violence, non-discrimination, including in respect to the girl child, children with disabilities, migrant children, protection and promotion of the rights of children in particularly vulnerable situations, including children working and/or living on the street, refugee and internally displaced children, progressive elimination of child labour, children alleged to have or recognized as having infringed penal law, prevention and eradication of the sale of children, child prostitution and child pornography, protection of children affected by armed conflict, recovery and social reintegration.

V. EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS INCLUDING REPORTING OBLIGATIONS OF STATES PARTIES TO THE UNITED NATIONS INSTRUMENTS IN THE FIELD OF HUMAN RIGHTS

23. The chairpersons of the human rights treaty bodies held their eleventh and twelfth annual meetings from 31 May to 4 June 1999 and from 5 to 8 June 2000, respectively, at the United Nations Office at Geneva. The reports of these meetings containing the suggestions and

recommendations of the chairpersons will be submitted to the General Assembly at its fifty-fifth session. (The report of the eleventh meeting is contained in the annex to document A/54/805; the report of the twelfth meeting has not yet been issued.)

24. Representatives of the Sub-Commission on the Promotion and Protection of Human Rights were invited to present the recent developments in the work of the Sub-Commission that were relevant to the work of the treaty bodies and to discuss possible areas of cooperation. The Sub-Commission was represented at the eleventh and twelfth meetings by Mr. Fisseha Yimer and Mr. Asbjørn Eide, respectively. In addition, the chairpersons of treaty bodies discussed at both meetings a wide range of issues related to their functioning and coordination, including with representatives of States, United Nations agencies, funds and programmes and non-governmental organizations. They also held a joint meeting with the mandate-holders of special procedures of the Commission on Human Rights which resulted in recommendations aimed at improving information exchange and coordination.

25. In accordance with its resolution 53/138 of 9 December 1998, the General Assembly will consider the question of effective implementation of international instruments on human rights at its fifty-fifth session.

VI. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

26. The Convention, which was adopted by the General Assembly in 1990, will enter into force when 20 States have ratified or acceded to it. As at 1 June 2000, 12 States (Azerbaijan, Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Mexico, Morocco, the Philippines, Senegal, Seychelles, Sri Lanka and Uganda) had ratified or acceded to the Convention and three other States (Bangladesh, Chile and Turkey) had signed it.

27. In its resolution 54/158 of 7 December 1999, the General Assembly called upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority and expressed the hope that the Convention would enter into force at an early date; requested the Secretary-General to provide all facilities and assistance necessary for the promotion of the Convention, through the World Public Information Campaign on Human Rights and the programme of advisory services in the field of human rights; and welcomed the decision of the Commission on Human Rights, in its resolution 1999/44 of 27 April 1999, to appoint a Special Rapporteur on the human rights of migrants.

28. The Commission on Human Rights, at its fifty-sixth session, adopted a similar resolution (2000/49) on 25 April 2000.